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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/587,616	06/13/2007	Wilfried Maier	1401D-005 (C10151/A-US)	9956
25215 7590 06/24/2009 DOBRUSIN & THENNISCH PC 29 W LAWRENCE ST SUITE 210 PONTIAC, MI 48342			EXAMINER NGUYEN, PHONG H	
			ART UNIT 3724	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/587,616	Applicant(s) MAIER ET AL.	
	Examiner PHONG H. NGUYEN	Art Unit 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18, 19 and 21-38 is/are pending in the application.
- 4a) Of the above claim(s) 21-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18, 19 and 30-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 June 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 32 and 34 is objected to because of the following informalities: “the front and rear shaped front and rear product slices” and “the front and rear shaped product slices” should be likely -- the front and rear shaped slices--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 18, 19 and 32-38 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claims 18 and 37, the original disclosure does not teach the combination of the conveying step and the compressing step. Each step is used independently for piling up slices. For example, the slices can be piled up by using two conveyor belts (2, 7) having different speeds as shown in Figs. 1-3 OR using one conveyor belt 2 in combination with the blocking rod 9 as shown in Fig. 4.

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4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 18, 19 and 32-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 18 and 37, it appears that the method of producing a food product comprising the conveying step OR the compressing step to pile up the slices but not both two steps as claimed. The slices are piled up by using two conveyor belts (2, 7) having different speeds as shown in Figs. 1-3 OR using one conveyor belt 2 in combination with the blocking rod 9 as shown in Fig. 4.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 18, 19, 30-35, 37 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiley et al. (3,855,889), hereinafter Wiley in view of Walker et al. (5,095,684), hereinafter Walker.

Regarding claim 18, Wiley teaches a method of producing a food product portion comprising the step of:

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a plurality of food product slices 130 cut off from a block of cheese 200; and

shaping and depositing the plurality of food product slices 130 to form a front shaped slice and a rear shaped slice on a means 82 at a spacing such that the front shaped slice and the rear shaped slice do not lie flat on the means.

See Fig. 2.

Wiley does not teach the steps of (1) conveying away the front shaped slice and the rear shaped slice so that the front shaped slice and the rear shaped slice are then slowed down and piled up; and (2) compressing the front shaped slice wherein the speed of the front shaped slice is reduced relative to the successive rear shaped slice so that the rear shaped slice is pushed up against the front shaped slice due to the greater speed of the rear shaped slice while reducing the spacing between the front shaped slice and the rear shaped slice.

Walker teaches the steps of (1) conveying away a front shaped slice and a rear shaped slice so that the front shaped slice and the rear shaped slice are then slowed down and piled up; and (2) compressing the front shaped slice wherein the speed of the front shaped slice is reduced relative to the successive rear shaped slice so that the rear shaped slice is pushed up against the front shaped slice due to the greater speed of the rear shaped slice while reducing the spacing between the front shaped slice and the rear shaped slice for grouping slices for packaging. See Fig. 1.

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to incorporate the conveying step and the compressing step of

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Walker in the method of producing a food product of Wiley for grouping slices for packaging.

Regarding claim 19, see Fig. 3 in Wiley.

Regarding claim 30, the rear shaped slice being pushed up against the front shaped slice is best seen in Fig. 4 in Walker.

Regarding claim 31, when the rear shaped slice is pushed up against the front shaped slice, the curved portion of the folded slices are change due the weight of the rear shaped slice acting on the front shaped slice.

Regarding claim 32, a first conveyor belt 22 and a second conveyor belt 19 are best seen in Fig. 1 in Walker.

Regarding claims 32 and 33, a first conveyor belt 19 and a second conveyor belt 20 forming a conveying plane is best seen in Fig. 1 in Walker.

Regarding claim 34, see Fig. 2 in Walker.

Regarding claim 35, the speed of the second conveyor belt is less than the sum of the speed of the first conveyor belt and the speed of the slice falling from the first conveyor belt onto the second conveyor belt so that the slices are shingled.

Regarding claim 37, Wiley teaches a method of producing a food product portion comprising the step of:

a plurality of food product slices 130 cut off from a block of cheese 200; and

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shaping and depositing the plurality of food product slices 130 to form a front shaped slice and a rear shaped slice on a means 82 at a spacing such that the front shaped slice and the rear shaped slice do not lie flat on the means.

See Fig. 2.

Wiley does not teach the steps of (1) conveying away the front shaped slice and the rear shaped slice so that the front shaped slice and the rear shaped slice are then slowed down and piled up; and (2) compressing the front shaped slice wherein the speed of the front shaped slice is reduced relative to the successive rear shaped slice so that the rear shaped slice is pushed up against the front shaped slice due to the greater speed of the rear shaped slice while reducing the spacing between the front shaped slice and the rear shaped slice.

Walker teaches the steps of (1) conveying away a front shaped slice and a rear shaped slice so that the front shaped slice and the rear shaped slice are then slowed down and piled up; and (2) compressing the front shaped slice wherein the speed of the front shaped slice is reduced relative to the successive rear shaped slice so that the rear shaped slice is pushed up against the front shaped slice due to the greater speed of the rear shaped slice while reducing the spacing between the front shaped slice and the rear shaped slice for grouping slices for packaging. See Fig. 1.

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to incorporate the conveying step and the compressing step of

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Walker in the method of producing a food product of Wiley for grouping slices for packaging.

It is to be noted that a first convey belt 19 and a second convey belt 20 are best seen in Fig. 1. The front slice does not stick to the rear slice when the slices are in conveyor belts 19 and 20 and the orientation of the front slice and the rear slice are changed at the conveying step or the compressing step.

Regarding claim 38, a first conveyor belt 19 and a second conveyor belt 20 forming a conveying plane is best seen in Fig. 1 in Walker.

8. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wiley et al. (3,855,889), hereinafter Wiley in view of Walker et al. (5,095,684), hereinafter Walker as applied to claims above, and further in view of Applicant's admitted prior art (page 6, lines 9-21), hereinafter AAPA.

Wiley teaches using a rod (non-driven roller) for folding the slices.

AAPA teaches the art equivalents of non-driven rollers and rollers (trapezoidal rollers) for folding slices.

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to use a plurality of rollers for folding slices since it has been held that substituting equivalents known for the same purpose is obvious to one skilled in the art. See MPEP. 2144.06.

Response to Arguments

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9. Applicant's arguments filed 03/18/2009 have been fully considered but they are not persuasive.

Applicant's arguments with respect to the combination of Wiley and Jones have been considered but are moot in view of the new ground(s) of rejection.

The Applicant argues that providing the compressing step to the food processing device of Wiley would destroy the purpose of the device. This argument is not persuasive. Firstly, there is an issue under 35 USC 112, first and second paragraphs with respect to this limitation. The original disclosure does not teach the compressing step being used in conjunction with the conveying step. The claimed method of producing a food product uses only the conveying step OR the compressing step to pile up slices. Secondly, the Applicant's cited paragraph in column 7, lines 37-42 to support his argument is not persuasive. The paragraph states "the entire loaf is more readily moved as a rigid object and does not have the tendency of distorting, compressing or the like" but not the slices.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHONG H. NGUYEN whose telephone number is (571)272-4510. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner, Art Unit 3724
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